



Coos County Planning Department

Coos County Courthouse Annex, Coquille, Oregon 97423
Mailing Address: 250 N. Baxter, Coos County Courthouse, Coquille, Oregon 97423
Physical Address: 225 N. Adams, Coquille, Oregon
(541) 396-7770
FAX (541) 396-1022/ TDD (800) 735-2900

Jill Rolfe, Planning Director

NOTICE OF LAND USE HEARING

You have received this notice because you are a party, an adjacent property owner, special district, or person with interest in the following application. Please read all the information contained in this notice as this matter may affect you. The location of the subject properties are identified in the attached list and the general location are shown on the map.

NOTICE IS HEREBY GIVEN THAT THE COOS COUNTY HEARINGS OFFICER WILL HOLD A PUBLIC HEARING ON WEDNESDAY MONDAY, JUNE 10, 2019, AT 1:30 PM, AND THE COOS COUNTY BOARD OF COMMISSIONERS WILL REVIEW THE HEARINGS OFFICER'S RECOMMENDATION AT A SEPARATE HEARING. THE BOARD OF COMMISSIONERS WILL NOT TAKE ADDITIONAL EVIDENCE OR TESTIMONY BEYOND WHAT IS PRESENTED TO THE HEARINGS OFFICER. THE HEARING WILL BE HELD AT THE OWEN BUILDING, COOS COUNTY COURTHOUSE ANNEX, 201 N. ADAMS, COQUILLE, OREGON, REGARDING THE FOLLOWING LAND USE MATTER:

PROPOSAL (FILE# REM-19-001): The public hearing on June 10, 2019 will be a hearing on remand from the Land Use Board of Appeals in regards to the *Oregon Shores Consideration Coalition v. Coos County, 76 OR LUBA 346 (217)* case in the matter of a conditional use permit and associated application (County File No. HBCU-15-05/CD-15-152/FP-15-09).

The original proposal (located on the website).

Conditional use approval for a Port and Industrial facility to accommodate a liquefied natural gas export terminal and associated facilities, related compliance determinations, driveway confirmation, floodplain certification, and extension of four prior approvals related to the project.

As part of this request the applicant has requested the following uses, accessory uses and activities:

- On property identified as the LNG Terminal Site:
 - LNG terminal
 - Slip and Access channel
 - Barge Berth
 - Fire Station and training center
 - Gas processing area
 - Road and Utility Corridor
 - Fill
 - Shoreline Stabilization (including vegetative, riprap, retaining walls and bulkheads)
 - Dredging
 - Dredge Material Disposal
 - Land Transportation Facility
- On properties identified as Kentuck Site, Parcel P, Parcel S and Parcel W.
 - Mitigation
 - Restoration
 - Excavation to create new water surface
 - Tide-gating
 - Fish and wildlife habitat management
- Time extensions for four conditional use permits previously approved by the County, including ACU-13-22 (upland LNG terminal), ACU-12-12/ABI-12-02 (Fill in 6-WD management unit), and ACU-12-16/ACU-12-17/ACU-12-18 Fill in the Industrial zone and 7-D management unit).

Posted on: May 21, 2019 through June 10, 2019

SCOPE OF HEARING: The Board of Commissioners voted on May 7, 2019 to appoint a hearings officer to hold a "*de novo*" evidentiary hearing on remand, as authorized by Coos County Zoning and Land Development Ordinance (LDO) 5.8.800(5)(c). The scope of the hearing will be limited to the issue identified by LUBA in its final opinion regarding the following:

1. Failed to correctly interpret and adopt adequate findings supported by substantial evidence in response to Coos Bay Estuary Management Plan ("CBEMP") Policy 5. The Board erred by: (1) interpreting CBEMP Policy #5.I.b to require an evaluation only of the public benefits of the dredging itself and not the public benefits of the upland use served by the dredging activity; (2) concluding that the "public need" standard is met if the dredging is needed to enable construction of a use that is permitted or conditionally allowed on adjacent upland or shoreland property; and (3) failing to adopt adequate findings supported by substantial evidence in the whole record that the Project would not unreasonably interfere with public trust rights. *OSCC*, 76 Or LUBA at 352-358(OSCC second assignment of error).;
2. Failed to Adopt Findings in Response to CBEMP Policies #4 and #4a - The Board erred by failing to adopt findings addressing compliance with CBEMP Policies 4 and 4a. *OSCC*, 76 Or LUBA at 359-361 (OSCC third assignment of error).
3. Failed to Adopt Adequate Findings in Response to CBEMP Policy #30 - The Board erred by failing to address whether subsidence due to dewatering is an issue under CBEMP Policy #30.I.c, and if so, adopt findings resolving that issue. *OSCC*, 76 Or LUBA at 361-363 (OSCC fourth assignment of error)
4. Failed to Adopt Adequate Findings in Response to Special Condition 5 of the CBEMP 7-D Management Unit - The Board erred by failing to adopt adequate findings in response to Special Condition 5, which applies to the placement of fill in the CBEMP 7-D management unit. *OSCC*, 76 Or LUBA at 363-364 (OSCC fifth assignment of error).
5. Improperly Construed Applicable Law in Determining that the Southwest Oregon Regional Safety Center ("SORSC") is a Permitted as an "Accessory Use" to a Fire Station in the Industrial Zoning District - The Board erred by failing to adopt a reviewable interpretation that the SORSC is permitted in the Industrial zone as an "accessory use," as that term is defined in CCZLDO 2.1.200. *OSCC*, 76 Or LUBA at 365-369 (OSCC seventh assignment of error).
6. Improperly Deferred CBEMP Policy #18 - The Board erred by improperly deferring an analysis of compliance with CBEMP Policy #18 concerning consideration of impacts to historical cultural, and archaeological sites to a second stage proceeding. *OSCC*, 76 Or LUBA at 374-381 (Tribes' first assignment of error).
7. Failure by Commissioner Sweet to Disclose Substance of *Ex Parte* Communication- Commissioner Sweet failed to disclose the substance of any *ex parte* communication that occurred at a 2014 community luncheon presentation by Applicant about aspects of the Project. *OSCC*, 76 Or LUBA at 371-372 (McCaffree first assignment of error).

PRESENTATION OF TESTIMONY: All interested persons will have an opportunity to testify at the hearing. However, **EVIDENCE AND ARGUMENT NOT RELATED TO ITEMS LISTED UNDER SCOPE OF HEARING WILL NOT BE ACCEPTED.** The scope of the remand is limited to the specific issues remanded by LUBA and summarized above. The Board is not permitted on remand to reconsider issues that have already been addressed and are resolved:

"The logical corollary is that parties may not raise old, resolved issues again. When the record is reopened at LUBA's direction on remand, the 'new issues' by definition include the remanded issues, but not the issues LUBA affirmed or reversed on the merits, which are old, resolved issues."

Prior to the hearing, the hearings officer will establish time limits for the applicant's and appellants' presentations and for other participants to speak.

Detailed information pertaining to the conduct of the public hearing and submittal of evidence is provided in LDO 5.7.300. Any person presenting testimony on behalf of a group, company or organization must provide evidence that the group, company or organization has authorized the person to present testimony on their behalf. Anyone entering a petition into the record is responsible for providing the signees of the petition with individual notice of the decision. For more information please visit <http://www.co.coos.or.us/Departments/Planning.aspx> .

All written evidence or testimony received prior to the close of the evidentiary record by the Hearings Officer will be included in the evidentiary record. Please be aware that failure to raise an applicable issue prior to the close of the evidentiary record, in person or in writing, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue, precludes appeal to LUBA based on that issue.

CRITERIA: For the purposes of this limited hearing on remand, the applicable criteria are as follows:
Coos County Zoning and Land Development Ordinance (CCZLDO):

Coos Bay Estuary Management Policies Article 3.2

- **#4 Resource Capability Consistency and Impact Assessment**
- **#4a Deferral of (I) Resource Capability Consistency Findings, and (II) Resource Impact Assessments**
- **#5 Estuarine Fill and Removal**
- **#30 Restricting Actions In Beach And Dune Areas With "Limited Development Suitability" And Special Consideration for Sensitive Beach and Dune Resources (Moved From Policy #31)**
- **#18 Protection Of Historical, Cultural And Archaeological Sites (this only applies within the estuary portion of the project and not to the industrial zoned portion)**

Coos Bay Estuary Management Article 3.2

Section 3.2.285 – 7-Development Shorelands (7-D) Management Objective, Special Condition 5

Coos County Zoning and Land Development Ordinance

Section 2.1.200 Definitions – Accessory Use

Article 5.7 Public Hearings

Article 5.8 Appeal Requirements (Remand Section)

BOARD REVIEW AND FINAL DECISION: Following the close of the public hearing, the Hearings Officer will consider all relevant testimony and evidence and will make a written recommendation to the Board of Commissioners. The Board of Commissioners will review the Hearings Officer's recommendation and the evidentiary record in a public meeting that will be noticed separately. The Board will deliberate regarding: (1) whether to accept, reject, or modify the Hearings Officer's recommendation, and (2) whether to accept, reject, or modify the revised findings and conditions provided by staff regarding the property owner consent issue. The Board's review will be "on the record" without a hearing, and no evidence or argument will be accepted. After the Board of Commissioners has rendered a final signed decision a notice of decision will be mailed to the applicant and all participants. Appeal of the county's final decision is to LUBA pursuant to ORS 197.830.

PUBLIC RECORDS AND STAFF CONTACTS: The application, all documents and evidence in the record and a list of the applicable criteria are available for inspection at the Coos County Planning Department. The Staff Report will be available for inspection at the Planning Department at least seven (7) days prior to the hearing. Copies may be obtained at a cost of 50 cents per page.

For further explanation regarding information contained in this notice, please call the Planning Department at 541-396-7770, or visit the Planning Department at 225 N. Adams, Coquille, Oregon, Monday through Friday, 8:00 a.m. – 5:00 p.m. (closed 12:00 p.m. – 1:00 p.m.).

POSTED ON: May 21, 2019
POSTED THROUGH: June 10, 2019